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CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
DEPUTY

IN THE MATTER OF THE )  
ADMINISTRATIVE INSPECTION OF )  
WAYNE FUNK, M.D. )  
2606 FLETCHER PARKWAY. )  
EL CAJON, CA 92020 )

Magistrate's Docket No.

Case No.

'08 MJ0108

AFFIDAVIT FOR ADMINISTRATIVE INSPECTION WARRANT

Darin M. White, being duly sworn, deposes and says:

1. This affidavit seeks an administrative inspection warrant, pursuant to 21 U.S.C. § 880 et seq., of WAYNE FUNK, M.D.'s current place of business, 2606 Fletcher Parkway, El Cajon, California 92020. Pursuant to 21 U.S.C. § 880(b)(1), the purpose is to verify the correctness of controlled substance inventories, records, reports and other documents required to be kept under the Controlled Substances Act and for the purposes of protecting the public health and safety. Title 21, United States Code, § 880(d) states that any judge of the United States or any United States Magistrate Judge may, within his territorial jurisdiction, and upon proper oath or affirmation showing probable cause, issue warrants for the purposes of conducting administrative inspections and seizures of property appropriate to such inspections: "For the purposes of this section, the term 'probable cause' means a valid public interest in the effective enforcement of this subchapter or regulations thereunder sufficient to justify administrative inspections of the area, premises, building, or conveyance, or contents thereof, in the circumstances specified in the application for the warrant." Based on the facts set forth below, I believe there is probable cause for the requested warrant.

1           2. Affiant is a duly appointed Diversion Investigator of the Drug Enforcement  
2 Administration (DEA), United States Department of Justice, currently assigned to the San Diego  
3 Field Division Office (SDFD), San Diego, California, and has been so employed for  
4 approximately four years. During this time, the affiant has completed an intensive 12-week  
5 training academy, which provided affiant with a background and basis of knowledge relating to  
6 the investigation of narcotic related crimes, including but not limited to, the importation and  
7 distribution of controlled substances in violation of Title 21 of the United States Code. I am  
8 currently assigned to the San Diego Field Division and have been so assigned throughout that  
9 time. During this time, I have investigated illicit controlled substance pharmaceutical trafficking  
10 in San Diego and surrounding areas. In the course of my employment, I have become familiar  
11 with the ordinary meaning of controlled substance pharmaceutical slang and jargon, the way  
12 prescription forms are written by physicians, dentists, and veterinarians and how these forms are  
13 stolen, forged or altered by those seeking to divert pharmaceuticals for illicit sales and  
14 consumption, and how prescriptions are normally filled and how pharmaceuticals are obtained,  
15 maintained, and how records are kept and audited by physicians.

16           3. Pursuant to Title 21, United States Code, Sections 878(a)(2) and 880(b), and Title 28,  
17 Code of Federal Regulations, Appendix to Subpart R, Part O, Section 3, your affiant is  
18 authorized to execute administrative inspection warrants for the purpose of inspecting controlled  
19 premises of persons and firms registered under the Controlled Substances Act (21 U.S.C. § 800  
20 et seq.) in order to inspect, copy, and verify the correctness of all records, reports, and other  
21 documents required to be kept or made under Title 21, United States Code, § 827, and § 1304 et  
22 seq., Title 21, Code of Federal Regulations.

23           4. WAYNE FUNK, M.D. is an individual registered under the provisions of the  
24 Controlled Substances Act, Title 21, United States Code, Sections 822 and 823 et seq., as a  
25 practitioner and is assigned DEA Registration Number AF0258358 in Schedules 2, 2N, 3, 3N, 4  
26 and 5. Dr. FUNK's registered principal place of business is 2606 Fletcher Parkway, El Cajon,  
27 CA 92020 (more specifically described in the warrant, incorporated herein). This place of  
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1 business is a controlled premise within the meaning of Title 21, United States Code, Sections  
2 880(a), and Title 21, Code of Federal Regulations, Section 1316.02(c).

3 5. WAYNE FUNK, M.D. is required to keep complete and accurate records of all  
4 controlled substances received, prescribed, dispensed, purchased, delivered or otherwise  
5 disposed of, pursuant to Title 21, United States Code, Sections 827, and Title 21, Code of  
6 Federal Regulations, Parts 1304 et seq.

7 6. The affiant has examined the files and records of the DEA and has determined that  
8 WAYNE FUNK, M.D. since being registered with the DEA has never been inspected.

9 7. On or about October 19, 2007, the SDFD received an anonymous complaint that Dr.  
10 FUNK was over-prescribing controlled substances and would write prescriptions for "any"  
11 controlled substance that was requested.

12 8. On December 19, 2007, the SDFD received additional information regarding Dr.  
13 FUNK. The information came in the form of a letter from the Department of Veterans Affairs  
14 (DVA) that a patient of Dr. FUNK's was interested in treatment in order to detox from Xanax.  
15 Xanax is the brand name for the Schedule IV prescription anti-anxiety prescription drug  
16 alprazolam. The patient reported to the DVA that Dr. FUNK had prescribed the patient large  
17 quantities of Xanax. In addition to prescribing Xanax, the patient claimed that Dr. FUNK  
18 offered to sell the patient Xanax directly from Dr. FUNK's office.

19 9. On December 28, 2007, the affiant conducted a review of the Controlled Substance  
20 Utilization Review and Evaluation System (CURES). The CURES, monitored by the California  
21 Department of Justice, maintains Schedule II, Schedule III, and Schedule IV prescription  
22 information that is received from California Pharmacies. A review of Dr. FUNK's CURES  
23 records indicated that Dr. FUNK did regularly prescribe alprazolam (Xanax). According to  
24 CURES, from January 1, 2007, through December 19, 2007, patients of Dr. FUNK filled two-  
25 hundred and fifty-four (254) alprazolam (Xanax) prescriptions or refills.

26 10. I seek to inspect Dr. Wayne FUNK's records to verify alprazolam (Xanax) and other  
27 controlled substances are being properly handled.  
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1 11. The inspection will be conducted within regular business hours, that the Diversion  
2 Investigator's credentials will be presented to the registrant, the inspection will begin as soon as  
3 practicable after the issuance of the warrant and will be completed with reasonable promptness,  
4 and that the warrant will be returned within ten (10) days.

5 12. The inspection will extend to the inspection and copying of inventories, records,  
6 reports, order forms, invoices, and other documents required to be kept and the inspection of all  
7 other things therein, including records, files, and papers, which are appropriate for the  
8 verification of the records, reports, and documents required to be kept under the Controlled  
9 Substances Act. The inspection will also extend to the inspection and inventory of stocks of  
10 finished or unfinished controlled substances, and if necessary, applicable records and/or samples  
11 of finished or unfinished controlled substances will be seized.

12 13. The affiant will be accompanied by one or more Diversion Investigators and DEA  
13 Special Agents who are employees of the U.S. Department of Justice, Drug Enforcement  
14 Administration, and are authorized by the Attorney General to conduct administrative  
15 inspections.

16 15. Upon the completion of the inspection, a return will be made to the Magistrate Judge  
17 who issued the warrant.

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1           16. The affiant further states that he has verified and has knowledge of the facts alleged  
2 in the affidavit, and that they are true to the best of his knowledge.

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6 Darin M. White  
7 Diversion Investigator  
8 United States Department of Justice  
9 Drug Enforcement Administration

10 Sworn to before me, and subscribed

11 in my presence on 1-15, 2008

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13 HON. NITA L. STORMES  
14 United States Magistrate Judge  
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